

DELEGATE HARDWICKE: Mr. Chairman, it occurs to me as far as a point of personal privilege is concerned, that where you take language out of the existing Constitution, it knocks the props out of previous judicial reasoning. If that is done, I do not see how you can correct it in this body by statements made to the contrary.

I realize you left the door open for amendments which could take care of that gap.

THE CHAIRMAN: You are putting into words exactly the matter which is troubling the Chair. I think the rank language standing alone is relatively clear. It does omit the qualifying language in Article 5 in the present Declaration of Rights.

The Chair is merely trying to put the matter in such a posture that appropriate amendments can be offered if desired.

Delegate Hardwicke.

DELEGATE HARDWICKE: I only suggest, Mr. Chairman, that the problem is more far-reaching than this particular provision. I do not think we should delude ourselves with regard to the extent to which we can change the plain import of the words.

THE CHAIRMAN: I quite agree, and the Chair did not mean to indicate by the statement of intent just given, nor to express an opinion that this is in any way binding upon the courts and will be followed by the courts. I was merely intending to indicate to the Committee of the Whole what is apparently the intent.

For what purpose does Delegate Clagett rise?

DELEGATE CLAGETT: Mr. Chairman, to inquire whether Delegate Case will yield to a question.

THE CHAIRMAN: Delegate Case, would you take the floor to yield to a question?

DELEGATE CASE: Yes, sir.

DELEGATE CLAGETT: Delegate Case, do you now intend to represent to the Committee of the Whole your formerly suggested but withdrawn Amendment No. 15?

THE CHAIRMAN: Delegate Case.

DELEGATE CASE: Well, Delegate Clagett, and Mr. Chairman and ladies and gentlemen of this Committee, I think that this matter has come to a point now where in all probability, so that the history of this Convention can be once and for all

made clear, I should re-offer the amendment so that we can have a vote on it.

THE CHAIRMAN: Delegate Case, the Chair would like to inquire whether you are proposing to offer Amendment No. 15 in the form originally offered, or whether you propose any modification of it.

DELEGATE CASE: Mr. Chairman, the purpose of this amendment is to state in the constitution the concept that you so ably expressed as your understanding of the intent of the Committee as stated by Chairman Kiefer. Now, if anybody can suggest any language which would do that better, I would certainly accept the amendment.

I have no pride of authorship. As a matter of fact, these are not my words. One of the co-sponsors drew the amendment.

What I am trying to do here is to preserve a concept which I think is a valuable one in the law of this State. No words have occurred to me, but perhaps some of the 70-odd lawyers in the hall who are listening to what I am saying can offer words which would meet this point.

THE CHAIRMAN: Very well.

Amendment No. 15, having been withdrawn, is now resubmitted by Delegate Case and seconded by Delegates Lord and Carson.

For what purpose does Delegate Weidemyer rise?

DELEGATE WEIDEMEYER: Mr. President, I rose before when we were in the discussion of the Committee's meeting, and I, with Delegate Childs, helped to draft this section. We had before us Article 5 of the present Declaration of Rights, and we had Article 21.

THE CHAIRMAN: I think I should accord the privilege to Delegate Case to speak first.

DELEGATE CASE: Mr. Chairman and ladies and gentlemen of the Committee of the Whole: Again let me state that the purpose of this amendment is not to deny a jury trial to anyone, except in those cases where our Court of Appeals has suggested that a jury trial is not appropriate. The Court of Appeals has called these cases petty offenses, and we took the words from the opinions of the Court of Appeals that I cited to you earlier. The same phrase is used by the Supreme Court of the United States in the quotation which I read, and